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c 457 Road Access Act

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CHAPTER 457

Road Access Act

1. In this Act,

Interpre-
tation

(a) "access road" means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land;

(b) "common road" means an access road on which public money has been expended for its repair or maintenance;

(c) "judge" means a judge of a county or district court;

(d) "motor vehicle" means a motor vehicle as defined in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

(e) "road" means land used or intended for use for the passage of motor vehicles. 1978, c. 61, s. 1.

2.—(1) No person shall construct or place a barrier or other obstacle over an access road, not being a common road, that, as a result, prevents all road access to one or more parcels of land or to boat docking facilities therefor, not owned by that person unless, .

When access
road may be
closed

(a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of such application to the parties and in the manner directed by this Act and the judge has granted the application to close the road;

(b) the closure is made in accordance with an agreement in writing with the owners of the land affected thereby;

- (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
- (d) the closure is made for a single period of no greater than twenty-four hours in a year for the purpose of preventing the acquisition of prescriptive rights.

When common
road may be
closed

(2) No person shall construct or place a barrier or other obstacle over a common road that as a result prevents the use of the road unless,

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or
- (b) the closure is of a temporary nature for the purposes of repair or maintenance of the road.

Notice

(3) Notice of an application to close an access road that is not a common road shall be served personally upon or sent by registered mail to the owner of each parcel of land served by the road who would, if the road were closed, be deprived of motor vehicle access to and from his land and, where the owner is not occupying the land, notice shall also be given to a tenant or occupant of the land by either,

- (a) handing the notice to an adult person who is a tenant or occupant of the land; or
- (b) posting the notice on the land in a place and manner that makes the notice conspicuous to an occupant of the land.

Idem

(4) Notice of an application to close a common road shall be published at least once a week for four successive weeks in a newspaper that is circulated in the area in which the proposed road closure is located, the last publication to be not less than ninety days before the date fixed for the hearing of the application, and any person who uses the road is entitled to be a party to the proceedings on the application.

Idem

(5) Notice of an application made under subsection (1) or (2) shall be given by registered mail to the clerk of the local municipality and the clerk of the county or regional, district or metropolitan municipality in which the road is situated or, in the case of a road located in territory without municipal organization, notice shall be similarly given to the Minister of Northern Affairs.

(6) An application under subsection (1) or (2) shall be accompanied by an affidavit of the applicant in which shall be included a description of the road sought to be closed, the proposed location of the barrier or other obstacle, the reasons in support of the closure, and, in the case of an application under subsection (1), the names and addresses of the persons who would, if the road were closed, be deprived of access to their lands. 1978, c. 61, s. 2.

Affidavit
to accompany
application

3. The judge may grant the closing order upon being satisfied that the closure of the road is reasonably necessary to prevent substantial damage or injury to the interests of the applicant or is reasonably necessary for some purpose in the public interest and the judge may impose such terms and conditions as the judge considers are reasonable and just under the circumstances, including a requirement that a suitable alternate road be provided. 1978, c. 61, s. 3.

When judge
may grant
order

4.—(1) Where notice as required under section 2 is not given, a judge may grant upon *ex parte* application an interim closing order if he is satisfied that the delay required to give notice would likely result in serious damage or injury to the interests of the applicant.

Interim
closing
order

(2) A judge may make an interim closing order on such terms and conditions and for such duration as the judge considers proper in the circumstances.

Terms
and
conditions

(3) A person entitled to notice at the time an interim closing is made may apply to a judge to have the order set aside and the judge may so order where he considers it proper in the circumstances. 1978, c. 61, s. 4.

Setting
aside
order

5. An appeal, in accordance with the rules of court, lies from an order of the judge under section 2 or 4 to the Divisional Court. 1978, c. 61, s. 5.

Appeal

6.—(1) Nothing in this Act shall be construed to confer any right in respect of the ownership of land where the right does not otherwise exist at law and nothing in this Act shall affect any alternative remedy at law available to any applicant or other person.

Saving

(2) The granting of a closing order or the dismissal of an application for a closing order under this Act shall not be construed as a determination that the road is or is not a public highway. 1978, c. 61, s. 6.

Order of
closure or
dismissal of
application
not
deter-
mination
of status of
road

Offence

7.—(1) Every person who knowingly contravenes subsection 2 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Order to
remove
barricade

(2) Where a person is convicted of an offence under this Act, the court may order the person to remove the barrier or other obstacle. 1978, c. 61, s. 7.

Temporary
closing of
forest roads
R.S.O. 1980,
c. 413

8. Nothing in this Act prevents the temporary closing of a public forest road or a private forest road within the meaning of the *Public Lands Act* where, in the opinion of the district manager, an emergency exists. 1978, c. 61, s. 8.